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EXAMINER

BELIVEAU, SCOTT E

ART UNIT PAPER NUMBER

2623

DATE MAILED: 05/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/729,811

Applicant(s)

CANDELORE ET AL.

Examiner

Scott Beliveau

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20-27 and 29-57 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 20-27 and 29-57 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Miscellaneous

1. Please note that the examiner and the examination art unit have changed.

Continued Examination Under 37 CFR 1.114

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 04 May 2006 has been entered.

Response to Arguments

3. The OFFICIAL NOTICE presented stating that a percentage of counts taken instead of a count down are notoriously well known in the art was not traversed and is accordingly taken as an admission of the fact noted.
4. The OFFICIAL NOTICE presented stating that multiplying by a ratio to take counts instead of a count down is notoriously well known in the art was not traversed and is accordingly taken as an admission of the fact noted.
5. Applicant's arguments with respect to claims 20-27 and 29-57 have been considered but are moot in view of the new ground(s) of rejection.

Claim Objections

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6. Claims 20-27 are objected to because the phrase “which if executed by a processor” suggests that the subsequently claimed steps need not be necessarily implemented thereby rendering the scope of the claim to simply refer to a “machine-readable medium”. The examiner suggests rewriting the preamble to set forth “a machine-readable medium that provides instructions executed by a processor that cause the processor to perform operations comprising” in order to positively recite and eliminate any ambiguity with respect to the operations actually being performed. For the purpose of examination, the examiner presumes that the steps of the operation are necessarily performed. Appropriate correction is required.

Claim Rejections - 35 USC § 101

7. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

8. Claims 20-27 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. In particular, claim 25 recites a computer readable medium that provides instructions, which as set forth in the specification, may be represented by carrier wave signals or infrared signals (IA: Page 14, Lines 18-19).

Claims that recite nothing but the physical characteristics of a form of energy, such as a frequency, voltage, or the strength of a magnetic field, define energy or magnetism, per se, and as such are nonstatutory natural phenomena. O'Reilly, 56 U.S. (15 How.) at 112-14. Moreover, it does not appear that a claim reciting a signal encoded with functional descriptive material falls within any of the categories of patentable subject matter set forth in § 101.

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A "composition of matter" "covers all compositions of two or more substances and includes all composite articles, whether they be results of chemical union, or of mechanical mixture, or whether they be gases, fluids, powders or solids." *Shell Development Co. v. Watson*, 149 F. Supp. 279, 280, 113 USPQ 265, 266 (D.D.C. 1957), *aff'd*, 252 F.2d 861, 116 USPQ 428 (D.C. Cir. 1958). A claimed signal is not matter, but a form of energy, and therefore is not a composition of matter.

The Supreme Court has read the term "manufacture" in accordance with its dictionary definition to mean "the production of articles for use from raw or prepared materials by giving to these materials new forms, qualities, properties, or combinations, whether by hand-labor or by machinery." *Diamond v. Chakrabarty*, 447 U.S. 303, 308, 206 USPQ 193, 196-97 (1980) (quoting *American Fruit Growers, Inc. v. Brogdex Co.*, 283 U.S. 1, 11, 8 USPQ 131, 133 (1931), which, in turn, quotes the Century Dictionary). Other courts have applied similar definitions. See *American Disappearing Bed Co. v. Arnaelsteen*, 182 F. 324, 325 (9th Cir. 1910), *cert. denied*, 220 U.S. 622 (1911). These definitions require physical substance, which a claimed signal does not have. Congress can be presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change. *Lorillard v. Pons*, 434 U.S. 575, 580 (1978). Thus, Congress must be presumed to have been aware of the interpretation of manufacture in *American Fruit Growers* when it passed the 1952 Patent Act.

A product is a tangible physical article or object, some form of matter, which a signal is not. That the other two product classes, machine and composition of matter, require physical matter is evidence that a manufacture was also intended to require physical matter. A signal,

a form of energy, does not fall within either of the two definitions of manufacture. Thus, the particular embodiments wherein the particular instructions are signals do not fall within one of the four statutory classes of § 101 and are thus considered to be non-statutory.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 37-40, 43-46 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's admitted prior art (APA) in view of Bedard (US Pat No. 5,801,747).

In consideration of claim 37, APA discloses that current "TV broadcast systems" provide EPG functionality and comprise limited resources to store and maintain viewer statistics such that subsequent to a particular statistic associated with measuring how long or how many times a viewer accesses the same channel or program reaching a maximum value associated with a count a rollover of counts will occur subsequent to being incremented again (IA: Page 2, Lines 9-15). Accordingly, APA provides evidence as to a "method for a broadcast system" which comprises a "rollover being a condition where a count value of [an item] . . . reaches a predetermined value" (ex. maximum value) "before being reset"; but does not disclose that such systems necessarily maintain "relative statistics on one or more items in association with preventing rollover of a count value or the particular creation of a list of favorites.

In an analogous art pertaining to television broadcast systems and the particular creation of lists of favorites, the Bedard reference discloses a set-top box which implements a method (Figure 3) for “detecting a tuning event” [300] (Col 3, Lines 63 – Col 4, Line 14), “maintaining relative statistics on one or more items related to the tuning event . . . including . . . adjustment relative statistics of each item of the one or more items” wherein the “count value [is] a relative statistic of the one or more items” such that the particular values are decremented by the same values (Col 4, Lines 49-65; Col 5, Line 34 – Col 7, Line 6), and “automatically [creating] a list of favorites based on the relative statistics” (Col 7, Lines 21-27). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made so as to modify the combined references using the teachings of Bedard so as to “maintain relative statistics on one or more items related to the tuning event, the maintaining of the relative statistics includes preventing rollover of count values by adjusting the relative statistics of each item of the one or more items, the rollover being a condition where a count value of a first item of the one or more items, reaches a predetermined value before being reset when the count value is next incremented” for the purpose of advantageously providing a means to manage limited memory resources associated with automatically monitoring viewing behavior and using such information in order to customize the display of an electronic program guide (Bedard: Col 1, Line 51 – Col 2, Line 13). For example, taken in combination, the system in association with attempting to add a new entry reduces viewing counts associated with ‘one or more’ previous entries of viewing, thereby maintaining relative statistics between these items. The particular act of decrementing counts serves to ‘prevent’ or forestall or take advanced measures associated

with “preventing rollover of a count value” by virtue of slowing the progression of counts reaching a theoretical maximum value.

Claim 38 is rejected wherein “detecting a tuning event includes detecting a selected channel” (Bedard: Col 3, Line 63 – Col 4, Line 14).

Claim 39 is rejected wherein the “list of favorites comprises a schedule listing consecutive weekly programs separated by time” in the form of EPG listings (Bedard: Col 7, Lines 19-27).

Claim 40 is rejected wherein the “count value identifies an amount of time that a channel was viewed over a predetermined time interval” (Bedard: Col 4, Lines 7-13 and 38-54).

Claim 43 is rejected wherein “preventing rollover is conducted by adjusting the relative statistics of each item of the one or more items through subtraction of a predetermined value from each count value associated with each item of the one or more items” (Bedard: Col 6, Lines 59 – Col 6, Line 22).

Claim 44 is rejected wherein the wherein the “preventing of rollover is conducted by adjusting the relative statistics of each item of the one or more items through subtraction of a predetermined percentage of counts from each count value associated with each item of the one or more items” (Col 5, Line 59 – Col 6, Line 46). For example, the claim does not require that the particular “predetermined percentage” is necessarily the same ‘predetermined percentage’ for each of the items or what the particular ‘predetermined percentage’ is a percentage in relationship to. Turning to Figure 2, the particular removal of 1 count from ‘ESPN’ and 1 count ‘SC’ serves to remove a ‘predetermined percentage’ of 5% and 2% of counts respectively. Alternatively, the system operates to remove a ‘predetermined

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percentage' or 100% of the counts associated with the item to be added to the list from each item previously in the list.

In consideration of claim 45, as aforementioned, the Bedard reference explicitly teaches the specific subtraction of a value from a count in order to reduce the number of counts which serves to prevent rollover. For example, in Figure 2, the system operates to reduce the count for 'ESPN' from 20 to 19 or by 5%. As is commonly known in the art, this is equivalent to multiplying the count value by 0.95. Applicant's admission of provides evidence of the fact that multiplying by a ratio to take counts instead of a count down is notoriously well known in the art. Accordingly, it would have been obvious to one having ordinary skill in the art so as to modify Bedard such that the "preventing of rollover is conducted by adjusting the relative statistics of each item of the one or more items through multiplication of each count value associated with each item by a percentage value less than one and greater than zero" for the purpose of substituting mathematically equivalent operations as method for reducing a value.

Claim 46 is rejected wherein the method further comprises "auto-tuning the list of favorites without user interaction" (Bedard: Col 7, Lines 39-55).

Claim 48 is rejected wherein the "one or more items include at least two of a program . . . and a theme of the program" (Bedard: Figure 2; Col 4, Lines 49-65).

11. Claims 41 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's admitted prior art (APA), in view of Bedard (US Pat No. 5,801,747), and in further view of Graves et al. (US Pat No. 5,410,344).

In consideration of claims 41 and 42, Bedard is silent with respect to the particular process of “creating the list of favorites” and ranking them as claimed. In an analogous art pertaining to television broadcast system, the Graves et al. reference discloses a method for ranking preferred programming. The method involves “multiplying the relative statistics for each item of the one or more items by a weighting factor assigned to the item” wherein “the multiplying of the relative statistics includes multiplying a count value for each item of the one or more items by the weighting factor associated with each items” and “(ii) ranking all of the items based on the highest weighted values” (Col 6, Lines 32-52; Col 8, Lines 5-51). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made so as to modify Bedard so as to perform the list creation method of Graves for the purpose of providing a means so as to select programming based upon user preferences which further utilizes an adaptive or neural system in order to improve rankings (Graves et al.: Col 1, Line 62 – Col 2, Line 20)

12. Claim 47 is are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant’s admitted prior art (APA), in view of Bedard (US Pat No. 5,801,747), and in view of Rothmuller (US Pat No. 5,635,989).

With respect to claim 47, the Bedard reference is silent with respect to “providing an alert if an item in the list of favorites is about to be shown or is being shown”. In an analogous art pertaining to television broadcast systems, the Rothmuller reference discloses a method for “providing an alert if an item in the list of favorites is about to be shown or is being shown” (Col 7, Lines 30-45). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made so as to modify Bedard to provide an “alert if an

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item in the list of favorites is about to be shown or is being shown” for the purpose of providing the user with the user with the ability to readily identify when a desired program will be broadcast (Rothmuller: Col 1, Lines 56-60).

13. Claims 20-22, 25, 27, 29-31, 33, 34, 36, 46, 48-53, and 55-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant’s admitted prior art (APA), in view of Saib et al. (US Pat No. 5,973,682), and in further view of Bedard (US Pat No. 5,801,747).

In consideration of claim 25, APA discloses that current TV broadcast systems provide EPG functionality and comprise limited resources to store and maintain viewer statistics such that subsequent to a particular statistic associated with measuring how long or how many times a viewer accesses the same channel or program reaching a maximum value associated with a count a rollover of counts will occur subsequent to being incremented again (IA: Page 2, Lines 9-15). Accordingly, APA provides evidence as to broadcast television systems which will suffer from a ‘rollover of a count value . . . upon the count value reaching a predetermined value’ (ex. maximum value) and “being reset when the count value is next incremented”; but does not disclose that such systems necessarily maintain “relative statistics on one or more items by preventing rollover of a count value”. APA is further silent with respect to the particular composition/architecture of the particular TV broadcast system such that it necessarily utilizes a “machine-readable medium” executed via a processor.

In an analogous art pertaining to television broadcast systems, Figures 1 and 2 illustrate a “TV broadcast system” that comprises a “machine-readable medium” (ex. [34]) “which, if executed by a processor” [29] “cause the processor to perform operations” associated with

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the implementation of user functionality to the system (Col 4, Lines 31-56). The particularly illustrated “TV broadcast system” further supports EPG functionality as well as favorites (Figure 3). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made so as to modify the “TV broadcast system” of APA so as to utilize the architecture and EPG teachings of Saib et al. for the purpose of particularly providing a TV broadcast system which provides a user friendly interface with distinguishing features of interactive portions of the EPG display (Saib et al.: Col 1, Lines 34-51). Taken in combination, the combined teachings are considered to provide a “TV broadcast system” which supports an EPG and favorites functionality and comprises limited resources to store and maintain statistics such that particular statistics will ‘rollover’ at a maximum value; however, the combined references are silent with respect to techniques to ‘prevent’ the rollover from occurring.

In an analogous art pertaining to television broadcast systems and the particular creation of lists of favorites, the Bedard reference discloses a set-top box that “detects a tuning event where a channel is continuously tuned in for over a selected period of time” (Col 3, Lines 63 – Col 4, Line 14), “maintains relative statistics on one or more items related to the tuning event . . . through adjustment of the count value” (Figure 3; Col 4, Lines 49-65; Col 5, Line 34 – Col 7, Line 6), and “creates automatically a list of favorites based on the maintained relative statistics” (Col 7, Lines 21-27). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made so as to modify the combined references using the teachings of Bedard so as to “maintain relative statistics on one or more items related to the tuning event by preventing rollover of a count value through

adjustment of the count value upon the count value reaching a predetermined value and being reset when the count value is next incremented” for the purpose of advantageously providing a means to manage limited memory resources associated with automatically monitoring viewing behavior and using such information in order to customize the display of an electronic program guide (Bedard: Col 1, Line 51 – Col 2, Line 13).

Claim 34 is rejected in light of the aforementioned combination. As aforementioned, APA discloses a “broadcast system” with limited resources wherein statistical counts are limited to a fixed size such that they ‘rollover’ after being incremented past a predetermined value. Figure 1 of Saib et al. illustrates a “broadcast system” comprising a “display” [4] and a “receiver coupled to the display” [2] which further supports favorites and EPG functionality. Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made so as to modify the “TV broadcast system” of APA to utilize the architecture and EPG teachings of Saib et al. for the purpose of particularly providing a TV broadcast system which provides a user friendly interface with distinguishing features of interactive portions of the EPG display (Saib et al.: Col 1, Lines 34-51).

Bedard discloses a “receiver” or set-top box that “stores relative statistics . . . detects a tuning event . . . maintains the relative statistics related to a plurality of items of the tuning event . . . automatically adjusts the count value of each of the plurality of items relative to each other so that an order of the plurality of items according to the count value remains intact, and . . . creates automatically a list of favorites based on the relative statistics in the memory” (Figure 3; Col 4, Lines 49-65; Col 5, Line 34 – Col 7, Line 6; Col 7, Lines 19-26). Accordingly, it would have been obvious to one having ordinary skill in the art at the time

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the invention was made so as to modify the combined references so as to comprise a “receiver coupled to the display and to store relative statistics, to detect a tuning event, to maintain the relative statistics related to a plurality of items of the tuning event, to prevent rollover of a count value by automatically adjusting the count value of each of the plurality items relative to each other so that an order of the plurality of items according to count value remains intact, and to create automatically a list of favorites based on the relative statistics in the memory” for the purpose of advantageously providing a means to manage limited memory resources associated with automatically monitoring viewing behavior and using such information in order to customize the display of an electronic program guide (Bedard: Col 1, Line 51 – Col 2, Line 13).

Claim 49 is rejected in light of the aforementioned combination of references. As aforementioned, APA provides evidence of an “apparatus” of TV broadcast system with limited resources wherein statistical counts are limited to a fixed size such that “rollover of the count value . . . [occurs] upon reaching a predetermined value prior to being reset”. Figure 2 of Saib et al. illustrates an “apparatus” [2] comprising a “front end” [20] “including a tuner” [21], a “memory” (ex. [38]), and a “processor” [29] “in communication with the front-end and the memory” (Col 4, Lines 31-56) which supports user preferences and EPG functionality. Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made so as to modify the “apparatus” of APA so as to utilize the architecture and EPG teachings of Saib et al. for the purpose of particularly providing a TV broadcast system which provides a user friendly interface with distinguishing features of interactive portions of the EPG display (Saib et al.: Col 1, Lines 34-51).

Bedard discloses an “apparatus” or set-top box necessarily comprising a memory in order to “stores relative statistics” [200] and a “processor” necessary to control the operations of the set-top box that “(i) detect[s] a tuning event, (ii) maintain[s] relative statistics on an item related to the tuning event, the relative statistics include a count value identifying either a number of times or a time interval that the item has been tuned to and received” (Col 4, Lines 27-65), “(iii) . . . at least adjust[s] the count value . . .” and “(iv) creates automatically a list of favorites based on the relative statistics in the memory” (Figure 3; Col 4, Lines 49-65; Col 5, Line 34 – Col 7, Line 6; Col 7, Lines 19-26). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made so as to modify the combined references so as to comprise a “processor in communication with the front-end and the memory, the processor to (i) detect a tuning event, (ii) maintain relative statistics on an item related to the tuning event, the relative statistics include a count value identifying either a number of times or a time interval that the item has been tuned to and received, (iii) prevent rollover of the count value by at least adjusting the count value upon reaching a predetermined value prior to being reset, and (iv) create automatically a list of favorites based on the relative statistics in the memory” for the purpose of advantageously providing a means to manage limited memory resources associated with automatically monitoring viewing behavior and using such information in order to customize the display of an electronic program guide (Bedard: Col 1, Line 51 – Col 2, Line 13).

Claims 20, 29, and 50 are rejected wherein the combined references “detect the tuning event by detecting a selected channel” (Bedard: Col 3, Line 63 – Col 4, Line 14).

Claims 21 and 30 are rejected wherein the combined references “create automatically the list of favorites to comprise a schedule listing consecutive weekly programs separated by time” in the form of EPG listings (Bedard: Col 7, Lines 19-27).

Claims 22, 31, and 46 are rejected wherein the combined references “auto-tune the list of favorites without user interaction” (Bedard: Col 7, Lines 39-55).

Claims 24 and 33 are rejected in light of Bedard wherein the system “creates automatically the list of favorites using a changing time scale as the list matures” (Col 6, Lines 28-46) such that in order for a particular entry to become a favorite early on it need not be viewed for an extensive period of time; however, as the list ‘matures’ or the viewer watches more programming a particular entry needs to be watched for a longer time scale before being deemed a favorite.

Claims 27, 36, 48, and 51 are rejected wherein the combined references “maintain relative statistics on one or more items that include a channel item” (Bedard: Figure 2; Col 4, Lines 49-65)

Claim 52 is rejected in light of the combined references. The Saib et al. reference discloses the existence of a “Favorite Key of a remote controller” (Figure 3). The Bedard reference discloses that the “list of favorites is accessible by depressing a . . . key of a remote controller” (Bedard: Figure 5; Col 7, Lines 39-64). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made so as to modify the combined references such that the “list of favorites is accessible by depressing a Favorite key of a remote controller” for the purpose of providing a logical correspondence between remote controller function labels and their corresponding functionality.

Claim 53 is rejected wherein the “count value identifies an amount of time that a channel was viewed over a predetermined time interval” (Bedard: Col 4, Lines 7-13 and 38-54).

Claim 55 is rejected wherein the “processor prevents rollover by adjusting the relative statistics on the item through subtraction of a predetermined value from the count value” (Bedard: Col 6, Lines 59 – Col 6, Line 22).

Claim 56 is rejected wherein the wherein the “processor prevents rollover by adjusting the relative statistics on the item through subtraction of a predetermined percentage of counts from the count value” (Col 5, Line 59 – Col 6, Line 46). For example, the claim does not require that the particular “predetermined percentage” is necessarily the same ‘predetermined percentage’ for each of the items or what the particular ‘predetermined percentage’ is a percentage in relationship to. Turning to Figure 2, the particular removal of 1 count from ‘ESPN’ and 1 count ‘SC’ serves to remove a ‘predetermined percentage’ of 5% and 2% of counts respectively. Alternatively, the system operates to remove a ‘predetermined percentage’ or 100% of the counts associated with the item to be added to the list from each item previously in the list.

In consideration of claim 57, as aforementioned, the Bedard reference explicitly teaches the specific subtraction of a value from a count in order to reduce the number of counts. For example, in Figure 2, the system operates to reduce the count for ‘ESPN’ from 20 to 19 or by 5%. As is commonly known in the art, this is equivalent to multiplying the count value by 0.95. Applicant’s admission of provides evidence of the fact that multiplying by a ratio to take counts instead of a count down is notoriously well known in the art. Accordingly, it would have been obvious to one having ordinary skill in the art so as to modify Bedard such

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that the “processor [to] prevent rollover by adjusting the relative statistics on the item through multiplication of the count value by a percentage value less than one and greater than zero” for the purpose of substituting mathematically equivalent operations as method for reducing a value.

14. Claims 23 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant’s admitted prior art (APA), in view of Saib et al. (US Pat No. 5,973,682), in view of Bedard (US Pat No. 5,801,747), and in further view of Finseth et al. (US Pat No. 6,813,775).

In consideration of claims 23 and 32, the Bedard reference is silent with respect to the system “providing access to the list of favorites from more than one device”. In an analogous art pertaining to television broadcast systems, the Finseth et al. reference discloses a system and method for sharing preferences or “providing access to [a] list of favorites from more than one device” (Figures 7-8; Col 2, Lines 22-33; Col 10, Line 64 – Col 11, Line 20; Col 12, Line 17 – Col 14, Line 62). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made so as to modify Bedard to “provide access to the list of favorites from more than one device” for the purpose of providing a means for users to share their viewing experiences with their friends relatives, or other individuals with similar interests (Finseth et al.: Col 1, Lines 42-54).

15. Claims 26, 35, and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant’s admitted prior art (APA), in view of Saib et al. (US Pat No. 5,973,682), in view of Bedard (US Pat No. 5,801,747), and in further view of Rothmuller (US Pat No. 5,635,989).

In consideration of claims 26, 35, and 47, the Bedard reference is silent with respect to “providing an alert if an item in the list of favorites is about to be shown or is being shown”. In an analogous art pertaining to television broadcast systems, the Rothmuller reference discloses a method for “providing an alert if an item in the list of favorites is about to be shown or is being shown” (Col 7, Lines 30-45). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made so as to modify Bedard to provide an “alert if an item in the list of favorites is about to be shown or is being shown” for the purpose of providing the user with the user with the ability to readily identify when a desired program will be broadcast (Rothmuller: Col 1, Lines 56-60).

16. Claim 54 is rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant’s admitted prior art (APA), in view of Saib et al. (US Pat No. 5,973,682), in view of Bedard (US Pat No. 5,801,747), and in further view of Graves et al. (US Pat No. 5,410,344).

In consideration of claim 54, Bedard is silent with respect to the particular process of “creating the list of favorites” and ranking them as claimed. In an analogous art pertaining to television broadcast system, the Graves et al. reference discloses a method for ranking preferred programming. The method involves “(i) multiplying the relative statistics on the item by a weighting factor assigned to the item, (ii) multiplying stored relative statistics on other times by a corresponding weighting factor assigned to each item, and (iii) ranking all of the items based on the highest weighted values” (Col 6, Lines 32-52; Col 8, Lines 5-51). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made so as to modify Bedard so as to perform the list creation method of Graves for the purpose of providing a means to select programming based upon user

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preferences which further utilizes an adaptive or neural system in order to improve rankings
(Graves et al.: Col 1, Line 62 – Col 2, Line 20).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Beliveau whose telephone number is 571-272-7343.

The examiner can normally be reached on Monday-Friday from 8:30 a.m. - 6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Miller can be reached on 571-272-7353. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Scott Beliveau
Examiner
Art Unit 2623

SEB
May 22, 2006